IN THE

Supreme Court of the United States

October Term, 1974

No. 74-11

LEWIS GENE FREEMAN,

Petitioner,

v.

UNITED STATES OF AMERICA

and

THE SECRETARY OF THE TREASURY OF THE UNITED STATES.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

REPLY BRIEF FOR PETITIONER

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Recent events involving the Presidency, which have occurred since the filing of the Petition for Certiorari, would have been considered as merely fanciful only a few years ago by most jurists and legal scholars. Yet, these events vindicate the views of our Founding Fathers on the importance of the Second Amendment right of the people to keep Arms. For but a month ago, "there was concern that an order could go to a military unit outside the chain of command for some sort of action against Congress during the time between a House vote for impeachment and a Senate trial on the impeachment charges." Ed Good-

paster, *Last Nixon Days: Watch Kept on the Pentagon,* New York Post, August 24, 1974, p. 5. Indeed, there was specific fear in high places of government that "Mr. Nixon or one of his aides might get in touch with some military units directly without going through the usual chain of command and order that some action be taken to block the 'constitutional process'." Bernard Gwertzman, *Pentagon Kept Tight Rein In Last Days of Nixon Rule,* New York Times, August 25, 1974, p. 1. And, of course, there was the ever present danger of "a 'legal' takeover since it would be ordered by the President as Commander-in-Chief." Army Times, *Army Seizes United States In 'Esquire' Plot,* April 10, 1974, annexed as p. 92a to the Appendix Accompanying the Petition for Certiorari. Thus, recent events bring into sharp focus the dangers of the Gun Control Act of 1968 outlined in the Petition for Certiorari herein, pp. 33-34; and these events confirm the fundamental importance of anonymous Arms-keeping in the hands of the people at large as our Founding Fathers would have it.

Although the Memorandum for the United States flatly states that the challenged provisions of the Gun Control Act of 1968 "do not *abrogate* the Second Amendment *right* to keep and bear arms" (Memo. for United States, p. 1, emphasis added); nevertheless, the issue in this case involves the question whether the challenged provisions of the Gun Control Act *infringe* the *right* of the *people* to keep and bear Arms (Second Amendment). And this question is hardly insubstantial:

> "Since this decision [*United States* v. *Miller,* 307 U.S. 174], Congress has placed greater limitations on the receipt, possession and transportation of firearms [;] and proposals for national registration or prohibition

of firearms altogether have been made. [Citing: Gun Control Act of 1968; National Commission on Reform of Federal Criminal Laws, *Working Papers* (Washington, 1970), 1031-1058, and *Final Report* (Washington, 1971), 246-247.] At what point regulation or prohibition of what classes of firearms would conflict with the (Second) Amendment, whether there would be a conflict, the *Miller* case does little more than cast a faint degree of illumination toward answering."

> *The Constitution of the United States, Analysis and Interpretation,* Congressional Research Service, Library of Congress. Senate Document No. 92-82, 92d Congress, 2d Session (U.S.Gov't Printing Office, 1973), 1036.

And as to the reliance of the Memorandum for the United States at p. 2 on the *obiter dicta* of *United States* v. *Biswell*, 406 U.S. 311 at 315-316, see the Petitioner's Petition for Certiorari at p. 16 (pointing out the failure of the parties in that case to have raised any of the relevant constitutional issues therein). Therefore, the cavalier attitude of the Memorandum for the United States in opposition to the instant Petition for Certiorari is simply not justified. For no case has ever come to grips with Petitioner's fundamental contentions regarding the interplay of the Second and Ninth Amendments and the consequent relationship to the preservation of our form of government.

It is therefore respectfully submitted that the Petition for Certiorari should be granted.

Respectfully submitted,

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